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IN THE MATTER OF THE ONTARIO HUMAN RIGHTS CODE

MAY 07 1986

and

IN THE MATTER OF THE COMPLAINT OF MR. JACK PONTE OF WILLOWDALE,  
ONTARIO, ALLEGING DISCRIMINATION IN EMPLOYMENT ON THE BASIS OF SEX  
AGAINST GOLDEN FLIGHT LTD. OPERATING AS HURONTARIO TRAVEL AND  
MR. MICHAEL KING, MANAGER, OF MISSISSAUGA ONTARIO

DECISION  
BOARD OF INQUIRY

MAY 2, 1986

ED RATUSHNY



IN THE MATTER OF THE ONTARIO HUMAN RIGHTS CODE

and

IN THE MATTER OF THE COMPLAINT OF MR. JACK PONTE OF WILLOWDALE, ONTARIO, ALLEGING DISCRIMINATION IN EMPLOYMENT ON THE BASIS OF SEX AGAINST GOLDEN FLIGHT LTD. OPERATING AS HURONTARIO TRAVLE AND MR. MICHAEL KING, MANAGER, OF MISSISSAUGA ONTARIO

DECISION

The respondent, Michael King, is the manager of a travel agency operating under the name of Hurontario Travel. The business is incorporated as Golden Flight Ltd. and Mr. King is the sole shareholder. In August of 1981, Mr. King caused to be placed in the Toronto Star, the following advertisement;

TRAVEL Counsellor, Mississagua, minimum of 1 year exper. Res. II an asset but not essential. Salary and benefits. Excellent opportunity for the right person. 277-1407.

The complainant, Jack Ponte, had just graduated from a three month travel course when he responded to the advertisement. From this point on, there is little agreement between the complainant and the respondent as to what occurred.

The complainant testified that at noon, on August 4th, he called the telephone number indicated and spoke with a man, who, obviously, was the respondent. According to the complainant, Mr. King laughed when he learned that a male was applying for the position and said:

... Don't you know that in this world there are some jobs that are for men, and there are some jobs that are for women, and this is a woman's job.

Still according to the complainant, Mr. King added that uniforms were required in the office and that since they were for women, they probably would not look good on Mr. Ponte.



The complainant further testified that he was infuriated but, in the circumstances, saw no point in pressing for an interview. He immediately called the Human Rights Commissioner and explained to an officer what happened. He suggested that the officer (presumably male) call to see whether he would receive the same response. However, the officer declined and suggested that the complainant arrange for a male and female person to place similar calls.

The complainant then arranged for two of his friends, Judah Benaim and Ruth Benchimol, to place calls with a 30 to 45 minute interval between them, and to write down the precise response. They were told of the complainant's qualifications i.e. the three month travel course.

Judah Benaim called the number and spoke to a man who was obviously Mr. King. He testified that Mr. King asked him whether he had typing skills and experience in relation to "C.R.T." (representing an automated reservations system). Mr. Benaim responded positively to both. He further testified that Mr. King then stated that the job was only available for a girl since uniforms were worn and "the skirts would not look good" on Mr. Benaim. When he persisted, the response was the same. Mr. Benaim made notes of the telephone conversation and referred to these during his testimony.

Ruth Benchimol also placed a call and spoke with Mr. King who identified himself during the conversation. She also took notes at the time to which she referred during her testimony. She testified that she informed Mr. King that she had just completed a travel course. Nevertheless, she was granted an interview scheduled for two days later. She testified that she was not asked about typing skills, or C.R.T. experience and Mr. King's only reservation appeared to be the distance from her place of residence in Willowdale to the place of work. However, he appeared to be reassured when she indicated that she had a car. It was only two days later, when she called to cancel her interview, that she was asked at the end of the conversation, whether she had any experience. She responded that she had not and



they said goodbye.

Perry Arnot is the officer for the Ontario Human Rights Commission who was assigned the Complaint of Jack Ponte. Mr. Arnot testified that in an interview to establish the facts for the Commission's purposes, Mr. King stated that: since the agency was small, complete skills were required; typing skills were necessary; C.R.T. experience was necessary. During the course of the interview, Mr. King initially indicated that he might have made a joke in relation to the allegation respecting uniforms. However, at the end of the interview, when Mr., Arnot reviewed his notes with Mr. King, the latter denied saying that he would make such a joke. He stated that his earlier comment was that "one" might make such a joke but "he" would not.

Mr. King testified that Jack Ponte, Judah Benaim and Ruth Benchimol were lying about their alleged telephone conversations with him. He stressed that he required an experienced person for the position in question because of the nature of his business and because of the requirements of I.A.T.A., an international association related to the travel business. He alleged a discrepancy between the facts as stated in the complaint and the testimony of the witnesses. He suggested that Mr. Ponte's motive in pursuing the claim proceeded from his frustration in not being able to find a job and his perception that because Mr. King was a West Indian, he would be an easy "mark" for financial compensation through a human rights complaint.

Section 4(1)(a) of the Ontario Human Rights Code RSC 1980 prohibits discrimination on the basis of sex by refusing "to refer or to recruit any person for employment". I agree with counsel for the Commission that the effective denial of an interview to a person because of that person's sex would constitute a contravention of this provision. Thus, if the facts presented by the Commission are accepted, the granting of an interview to Ruth Benchimol while denying one to Jack Ponte, without any relevant distinguishing factors, would constitute a violation of the Code. (See, for example, Hendry v.



Liquor Control Board of Ontario, 1 C.H.R.R. D/160).

After carefully observing the demeanor of the witnesses while hearing their oral testimony as well as, subsequently, reviewing that testimony in the transcript of the proceedings, I have concluded that the testimony of all of the Commission witnesses is to be preferred to that of Mr. King. All of the Commission witnesses were direct and consistent in their presentation of the facts. The respondent sought to make much of an alleged discrepancy between the Complaint and the testimony of Judah Benaim and Ruth Benchimol. The Complaint indicates that when each of them placed the calls in question, they spoke to a woman first and were then referred to a man. When testifying they could not recall whether they first spoke to another person who then transferred them to Mr. King. While Mr. King displayed considerable skill as an advocate in revealing and attempting to exploit this inconsistency, I do not consider it to be of great significance. It is perfectly natural to forget, after almost five years, whether one reaches a person by telephone directly or through another person who might happen to answer the phone. Moreover, in response to the alleged contradiction, both witnesses answered in a frank and forthright manner that they simply did not remember and had not taken notes of this aspect in contrast with their conversations with Mr. King.

Mr. King was not a credible witness. He appears to be a very intelligent and mentally agile person. During the hearing, he attempted to project the image of a naive and innocent victim who was being oppressed by the complainant and the Commission. However, the phrase "naive as a fox" would be more accurate. He was a master of evasion and obfuscation and, in my view, exaggerated and distorted his testimony as well as his lack of understanding and appreciation of the nature of the hearing.

Mr. King presented a strong argument in relation to his need for an experienced travel counsellor. This position is supported by the newspaper advertisement. However, the evidence established that Mr.



King had hired less experienced persons in the past and that it was not always possible to hire employees with the extent of experience which would be preferred. Most importantly, an interview was granted to Ruth Benchimol although she had made it clear to Mr. King that she had no greater qualifications or experience than the complainant.

It is also clear from the evidence that Mr. King was only prepared to consider a woman for the position in question. This condition was based, in part, upon the stereotypical view that women are more likely to be able to type than men. The position of travel counsellor in his business appears always to have been filled by women. While he attempted to establish that he had also engaged men, that was not the case for the position of travel counsellor. There may have been other reasons for wanting to have women in the position in question. Mr. King suggested in argument that other women employees may have preferred to work with women. However, such a consideration could not sanction a contravention of the Ontario Human Rights Code.

It is also clear that Mr. King did make comments about the need for employees to wear uniforms designed for women. The testimony of both Mr. Ponte and Mr. Benaim on this matter was direct and not seriously challenged during cross-examination. Moreover, it was also supported by Mr. King's feeble explanation and subsequent variation in conversation with the human rights officer, Perry Arnot, whom I found to be a particularly careful yet forthright and highly credible witness.

The decision of this board of inquiry is that the respondents Michael King and Golden Flight Ltd. have contravened the Ontario Human Rights Code by denying an interview to Jack Ponte because he is a male person.

Before addressing the question of an appropriate order, reference should be made to the difficulties created at this hearing by the absence of counsel on behalf of the respondent. At the outset,



the procedure to be followed was explained in some detail. Following cross-examination of the first witness, Mr. King stated he was not aware that the proceedings would be as they were and that, had he known, he would have arranged for witnesses. However, when asked if he wished an opportunity to adjourn and call other witnesses, he declined. Numerous accommodations were made for the unrepresented respondent including broad latitude in relation to evidentiary issues and frequent explanations as to the nature and sequence of the proceedings.

Nevertheless, in the course of final argument, the respondent sought to adjourn the proceedings with a view to retaining counsel and having the witnesses recalled. The respondent took the position that he had never been informed of the true nature of the hearing and that a representative of the Human Rights Commission had discouraged him from retaining counsel. Evidence was called on this specific issue and, ultimately, the request was denied. The portion of the transcript of the hearing which contains the ruling on this request is attached to this decision for reference.

In future hearings, where a respondent is not represented by counsel, Commission counsel might wish to consider establishing in evidence at the outset: the nature of the notice of hearing which was served; notice that the proceedings are conducted in a manner very similar to a judicial trial; notice of the nature of the order which a board of inquiry might make under section 40 of the Ontario Human Rights Code; notice that the Commission will be represented by legal counsel, that other parties are often represented by legal counsel and that the respondent might also wish to engage counsel. It is recognized that such an approach goes beyond the requirements in law for adequate notice. However, they might contribute significantly to avoiding unnecessary adjournments or the prolongation of hearings.

Counsel for the Commission has suggested that an order should be made providing for a financial award in the sum of \$2,000 to \$2,500 and the requirements that a letter of apology be written by Mr. King




and that he attend a one day training session to be provided by the Commission to review the employment practices and procedures as prescribed by the Code.

There was no evidence of special damages suffered by the complainant and no clear evidence that he would have been the successful applicant if proper screening and hiring practices had been followed. In fact, he found another position soon after the incident in question and, in his words "did quite well". However, there is no question that he was extremely upset at the time and must have considered the matter to be of importance to have pursued it for almost five years.

In contrast, the manner in which the respondent has treated this matter suggests that a punitive award might well be appropriate. However, as counsel for the Commission conceded, there is no provision under the 1980 Code, which governs these proceedings, for punitive or exemplary damages. In all of the circumstances, it is ordered:

- (1) that the respondents, Golden Flight Ltd. and Michael King, pay to the complainant Jack Ponte the sum of \$750.00.
- (2) that the respondent, Michael King, attend a one day training session to be provided by the Ontario Human Rights Commission, at a reasonable time and place prior to December 31st of this year, to be set by the Commission, to review the employment practices and procedures as prescribed by the Ontario Human Rights Code.

Dated May 2nd, 1986.



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Ed Ratushny  
Board of Inquiry



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M. King - Cr.-Ex.'  
(C. Osborne)

Q. You did not bring it...is that  
correct?

A. No, no.

Q. I have no further questions.

THE CHAIRMAN: Thank you. On this  
question of the request for an adjournment,  
are there any submissions on the basis of  
the evidence that we have heard...any  
further submissions?

MS. OSBORNE: Mr. Chairman, I would just  
like to indicate that if you are to prepare  
to call into question, as to whether he  
was served with the notice of the proceedings  
I would like to call the person from the  
Office of Arbitration, if you are not  
prepared to find that his presence here  
today, vidiates any indication that he was  
not properly served with notice.

I would like to point out that  
section 6 of the Statutory Powers Procedure  
Act, sets out the requirements for a  
notice of a hearing, issued for tribunals,  
covered by the Statute, provides as follows:



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5 "...that a notice shall include a statement  
of the time, place and purpose of the  
hearing, a reference to the Statutory  
authority under which the hearing will be  
held, and a statement that if the Party  
10 notified does not attend the hearing, the  
tribunal may proceed in his absence, and  
he is not entitled to further notice of  
the proceedings..."

15 In my respectful view, the notice  
of which you have a copy, is in perfect  
conformity with the requirements of the  
Statutory Powers Procedure Act, and that  
you may refer to your own instructions  
20 yesterday to Mr. King, if my memory serves  
me correctly.

25 He was informed on two occasions  
that he had the right to request an  
adjournment, to obtain witnesses or to  
obtain counsel, and he specifically  
elected to proceed, after having been so  
informed.

30 As such, I would respectfully submit  
that it is too late in the game for him to

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make this application now.

THE CHAIRMAN: Any last comments on this question of adjournment? Mr. King?

MR. KING: Well, yes.

BY MR. KING:

I think, as I mentioned before, I am not a lawyer. I don't have any knowledge of these things. I have never been into things like this before.

I think we...the balance of this thing doesn't seem to be in my mind, if I could use the word 'fair'. There is one, two, three, four people and I am alone here.

I do know I have...I do know that I don't think this is...as far as justice in this land is concerned, I don't think this is fair...all in all, for me not have to at least someone to hear what I have to say and to...of all these things, apparently this lady has said it all...these things, right, against Michael King alone, and I don't know...it doesn't seem fair to me.

So, based on this, I think I would like to have someone with equal, or close to equal status, to represent.

THE CHAIRMAN: Thank you, Mr. King.



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R U L I N G:

5 THE CHAIRMAN: I have given very careful and agonizing consideration to this question, all the way through this morning, and it has, of course, concerned me from the outset of the proceedings.

10 It is very difficult to conduct proceedings when a party is represented by counsel, and another party is not.

15 In terms of fairness and someone to listen to you, I have bent over backwards to try to make the proceedings as far as possible to you, and to take into account, the absence of representation by legal counsel, on your behalf.

20 We did offer an adjournment to you at the outset, in order to prepare further if you wished, and you did elect to proceed.

25 I then explained the procedure to you, in some detail, at the beginning, and then I tried to keep explaining to you what was happening at every stage.

30 During the course of the evidence, there were a number of occasions on which the testimony was not properly presented, from a legal point of view.



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There could have been legal objections on the basis of hearsay...objections, fairness, relevance, and so on, but I tended not to want to interfere ...to give you as much latitude as possible, and indeed, counsel for the Commission has kept her objections to a minimum, I think, recognizing the mood of the Chair on that issue.

We did, also, adopt some exceptional procedures, where even though we were into the argument stage, we permitted you to re-open the evidence, in order to ask further questions of another witness, and an adjournment was provided last night, to permit further opportunity for you to consult counsel, at your request, before completing your final submissions.

In all of these circumstances, and having gone this far, and on the basis of the testimony that we have heard, I am not inclined to grant an adjournment to re-open the case.

I believe that we have the evidence and every effort was made to try to make the proceedings as fair as possible to you, and so I will ask that you complete your submissions...your argument and then on the basis of the argument that I have heard, and the evidence which has been presented, I will consider all of the evidence and come to a decision.

